



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2307/P4

MJL&RNK:wlj:rs

D-Noted

RPN

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON
Please

Regen

1 AN ACT to create 101.148 and 895.07 of the statutes; relating to: claims against
2 certain building contractors.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 101.148 of the statutes is created to read:

4 **101.148 Contractor notices.** (1) DEFINITIONS. In this section:

5 (a) "Building" means any structure that is an improvement to land and that is
6 intended for use as a dwelling.

7 (b) "Claimant" has the meaning given in s. 895.07 (1) (c).

8 (c) "Contractor" means a person that enters into a contract with a potential
9 claimant to construct a building on the potential claimant's land, to complete a
10 remodeling project on a building on the potential claimant's land, or to complete a

1 remodeling project on the potential claimant's modular home. "Contractor" includes
2 a subcontractor.

3 (e) "Remodel" does not include maintenance and repair work.

4 (f) "Supplier" means a person that supplies windows or doors to a building.

5 **(2) NOTICE REQUIRED AT TIME OF CONTRACTING.** (a) Upon entering into a contract
6 to construct a building, to complete a remodeling project on a building, or to complete
7 a remodeling project on a modular home, the contractor shall give the potential
8 claimant, if any, a notice worded substantially as follows:

9 NOTICE CONCERNING CONSTRUCTION

10 DEFECTS

11 Wisconsin law contains important requirements you must follow before you
12 may file a lawsuit for defective construction against the contractor who constructed
13 your building or completed your remodeling project or against window or door
14 suppliers. For example, section 895.07 (2) and (3) of the Wisconsin statutes requires
15 you to deliver to the contractor a written notice of any construction conditions you
16 allege are defective before you file your lawsuit, and you must provide your
17 contractor or window or door suppliers the opportunity to make an offer to repair or
18 pay for the construction defects. You are not obligated to accept any offer made by
19 the contractor or window or door suppliers, but failure to accept a reasonable offer
20 may limit your recoverable damages. All parties are bound by applicable warranty
21 provisions.

22 (b) The notice required under par. (a) shall be conspicuous and in writing and
23 may be included within the contract between the contractor and the potential
24 claimant.

25 **SECTION 2.** 895.07 of the statutes is created to read:

1 **895.07 Claims against contractors and suppliers. (1) DEFINITIONS.** In this
2 section:

3 (a) “Action” means a civil action or an arbitration under ch. 788.

4 (b) “Building” has the meaning given in s. 101.148 (1) (a).

5 (c) “Claimant” means a homeowner, other than a developer or builder, who
6 asserts a claim against a contractor or supplier concerning a construction defect.

7 (d) “Construction defect” has the meaning assigned by a written, express
8 warranty provided by the contractor or, if no such meaning is assigned by warranty,
9 means a deficiency in the specifications, planning, supervision, construction, or
10 remodeling of a building or in the remodeling of a modular home that results from
11 any of the following:

12 1. Defective material.

13 2. Violation of applicable building codes.

14 3. Failure to follow accepted trade standards for workmanlike construction.

15 (e) “Contractor” means a person that enters into a contract with a potential
16 claimant to construct a building or to complete a remodeling project on a building.

17 (g) “Serve” or “service” means personal service or delivery by certified mail,
18 return receipt requested, to the last-known address of the addressee.

19 (h) “Supplier” has the meaning given in s. 101.148 (1) (f).

20 **(2) ACTION; DISMISSAL WITHOUT PREJUDICE.** Before filing an action against a
21 contractor or supplier for a construction defect, the claimant shall serve the
22 contractor with a notice of the claim that describes the claim in sufficient detail to
23 determine the general nature of the construction defect. If the claimant files an
24 action but fails to serve the notice of claim, the court shall dismiss the action without

1 prejudice, and the action may not be refiled until the claimant has complied with the
2 requirements of this subsection.

3 (3) NOTICE AND OPPORTUNITY TO REPAIR. (a) No later than ¹³⁵~~90~~ days before
4 initiating an action against a contractor or supplier under this section, the claimant
5 shall serve written notice of claim under sub. (2) on the contractor. The notice of
6 claim shall state that the claimant asserts a construction defect claim or claims and
7 is providing notice under this paragraph. The notice of claim shall describe the claim
8 or claims in sufficient detail to explain the nature of the alleged construction defect
9 and the results of the construction defect. The claimant shall provide to the
10 contractor all evidence the claimant knows or possesses, including expert reports,
11 photographs, electronic mail, and videotapes that depict the nature and cause of the
12 alleged construction defect. In addition, the claimant shall provide to the contractor
13 any evidence discoverable under ch. 804 that depicts the nature and cause of the
14 construction defect, including expert reports, photographs, and videotapes. The
15 claimant may not later use evidence in an action under this section that the claimant
16 withholds or fails to produce.

17 (b) Within 30 days after the claimant serves notice of claim under par. (a), or
18 within 45 days if the contractor makes a claim for contribution from a supplier under
19 sub. (9) (a), each contractor that has received the notice of claim may serve on the
20 claimant, and on any other contractor that has received the notice of claim and on
21 any supplier that has received a claim for contribution under sub. (9) (a), a written
22 response to the claim or claims that either offers to settle the claim by monetary
23 payment, the making of repairs, or a combination of both, without inspection, or
24 proposes to inspect the building that is the subject of the claim.

1 (c) Within 30 days after a supplier has received notice that a contractor is
2 seeking contribution under sub. (9) (a), the supplier may serve the contractor with
3 a written response that offers to settle the contribution claim by payment, by repair,
4 or by both payment and repair without inspection or that offers to inspect the
5 building that is the subject of the contribution claim. The contractor shall forward
6 the supplier's response to the claimant. The supplier and contractor shall use their
7 best efforts to coordinate their responses to claims and contribution claims.

8 (d) If the contractor wholly rejects the claim and will neither remedy the alleged
9 construction defect nor settle the claim, or does not respond to the claimant's notice
10 of claim within the time under par. (b), the claimant may bring an action against the
11 contractor for the claims described in the notice of claim without further notice
12 ~~except as otherwise provided under applicable law.~~

13 (e) If the claimant rejects a settlement offer made by the contractor, the
14 claimant shall provide written notice of the claimant's rejection to the contractor and,
15 if represented by legal counsel, the contractor's attorney. The notice shall include the
16 specific factual and, if known, legal reasons for the claimant's rejection of the
17 contractor's proposal or offer. If the claimant believes that the settlement offer omits
18 reference to any portion of the claim, or was unreasonable, the claimant shall in its
19 written notice include those items that the claimant believes were omitted and set
20 forth in detail all reasons why the claimant believes the settlement offer is
21 unreasonable. In any subsequent action in which the claimant asserts that the
22 settlement offer was unreasonable, the claimant may not raise any reasons that were
23 not included in its response to the contractor. The contractor shall forward the
24 claimant's response to a supplier upon whom a contribution claim has been made.

1 (f) If a proposal for inspection is made under par. (b), the claimant shall, within
2 30 days of receiving the contractor's proposal, provide the contractor and any
3 supplier on whom a contribution claim has been made and its agents, experts, and
4 consultants prompt and complete access to the building to inspect the building,
5 document any alleged construction defects, and perform any testing required to
6 evaluate fully the nature, extent, and cause of the claimed construction defects and
7 the nature and extent of any repairs or replacements that may be necessary to
8 remedy them. If destructive testing is required, the contractor shall give the
9 claimant and all persons on whom a notice of claim or contribution claim has been
10 served advance notice of the testing at least 10 days before commencement of the
11 testing and shall, after completion of the testing, return the building to its
12 pre-testing condition. If any inspection or testing reveals a condition that requires
13 additional testing to allow the contractor to evaluate fully the nature, cause, and
14 extent of the construction defect, the contractor shall provide notice to the claimant
15 and all persons on whom a notice of claim or contribution claim has been served of
16 the need for the additional testing and the claimant shall provide access under this
17 paragraph. If a claim is asserted on behalf of the owners of multiple buildings, or
18 multiple owners of units within a multifamily complex, then the contractor shall be
19 entitled to inspect each of the buildings or units. The claimant shall either provide
20 a specific day for the inspection upon reasonable notice for an inspection or require
21 the contractor to request in writing a day, at least 3 days before the inspection.

22 (g) Within 14 days following completion of the inspection and receipt of all
23 testing results under par. (f), the contractor may serve on the claimant any of the
24 following:

1 1. A written offer to remedy fully or partially the construction defect at no cost
2 to the claimant. The offer shall include a description of any additional construction
3 necessary to remedy the construction defect and an anticipated timetable for the
4 completion of the construction.

5 2. A written offer to settle the claim by monetary payment.

6 3. A written offer including a combination of repairs and monetary payment.

7 4. A written statement that the contractor will not proceed further to remedy
8 the construction defect.

9 (h) If a claimant accepts a contractor's offer made under par. (g) and the
10 contractor does not proceed to make the monetary payment or remedy the
11 construction defect within the agreed timetable, the claimant may bring an action
12 against the contractor for the claim described in the notice of claim without further
13 notice, ~~except as otherwise provided by applicable law.~~ The claimant may also file
14 the contractor's offer and claimant's acceptance, and the offer and acceptance creates
15 a rebuttable presumption that a binding and valid settlement agreement has been
16 created and should be enforced by the court.

17 (i) If a claimant receives a written statement that the contractor will not
18 proceed further to remedy the construction defect, the claimant may bring an action
19 against the contractor for the claim described in the notice of claim without further
20 notice, ~~except as otherwise provided by applicable law.~~

21 (j) If the claimant rejects the offer made by the contractor to remedy the
22 construction defect or to settle the claim by monetary payment or a combination of
23 each, the claimant shall serve written notice of the claimant's rejection on the
24 contractor. The notice shall include the specific factual and, if known, legal reasons
25 for the claimant's rejection of the contractor's offer. If the claimant believes the

1 contractor's settlement offer is unreasonable, the claimant shall set forth in detail
2 all reasons why the claimant believes the settlement offer is unreasonable. In
3 any subsequent action in which the claimant asserts that the settlement offer was
4 unreasonable, the claimant may not raise any new reasons unless the claimant later
5 discovers significant information.

6 (k) Upon receipt of a claimant's rejection and the reasons for the rejection, the
7 contractor may, within 15 days of receiving the rejection, make a supplemental offer
8 of repair or monetary payment to the claimant.

9 (L) If the claimant rejects the supplemental offer made by the contractor to
10 remedy the construction defect or to settle the claim by monetary payment or a
11 combination of each, the claimant shall serve written notice of the claimant's
12 rejection on the contractor. The notice shall include the specific factual and, if
13 known, legal reasons for the claimant's rejection of the contractor's supplemental
14 settlement offer. If the claimant believes the contractor's supplemental settlement
15 offer is unreasonable, the claimant shall set forth in detail all reasons why the
16 claimant believes the supplemental settlement offer is unreasonable. In any
17 subsequent action in which the claimant asserts that the settlement offer was
18 unreasonable, the claimant may not raise any reasons that were not included in its
19 response to the contractor.

20 (m) If a claimant rejects a reasonable offer, including any reasonable
21 supplemental offer, made as provided under this subsection or does not permit the
22 contractor to repair the construction defect pursuant to an accepted offer of
23 settlement, the claimant may not recover an amount in excess of the fair market
24 value of the offer of settlement, or the actual cost of the repairs made, whichever is
25 less, or the amount of a monetary offer of settlement. For purposes of this paragraph,

1 the trier of fact shall determine the reasonableness of an offer of settlement. If the
2 claimant has rejected a reasonable offer, including any reasonable supplemental
3 offer, and any other law allows the claimant to recover costs and attorney fees, then
4 the claimant may recover no costs or attorney fees incurred after the date of its
5 rejection.

6 (n) A claimant accepting the offer of the contractor to remedy a construction
7 defect shall do so by serving the contractor with a written notice of acceptance within
8 a reasonable period of time after receipt of the contractor's settlement offer, but no
9 later than 30 days after receipt of the offer. If no response is served upon the
10 contractor within the 30-day period, then the offer shall be deemed accepted.

11 (o) If a claimant accepts a contractor's offer to repair a construction defect
12 described in a notice of claim, the claimant shall provide the contractor and its
13 agents, experts, and consultants prompt and unfettered access to the building to
14 perform and complete the construction by the timetable stated in the settlement
15 offer.

16 (p) If, during the pendency of the notice, inspection, offer, acceptance, or repair
17 process, an applicable limitations period would otherwise expire, the claimant may
18 file an action against the contractor or supplier, but the action shall be immediately
19 abated pending completion of the notice of claim process described in this section.
20 This paragraph shall not be construed to revive a statute of limitations period that
21 has expired before the date on which a claimant's written notice of claim is served
22 or extend any applicable statute of repose.

23 (q) After the sending of the initial notice of claim, a claimant, a contractor, and
24 a supplier may, by written mutual agreement, alter the procedure for the notice of
25 claim process described in this section.

1 **(4) CONTRACTOR OR SUPPLIER NOT LIABLE FOR CERTAIN DAMAGES.** In an action
2 relating to a building involving a construction defect, a contractor or supplier shall
3 not be liable for damages involving or caused by any of the following:

4 (a) Normal shrinkage due to drying or settlement of construction components
5 within the tolerance of building standards.

6 (b) The contractor's or supplier's reliance on written information relating to the
7 building that was obtained from official government records or provided by a
8 government entity.

9 (c) Any construction defect known by or disclosed to a claimant in writing before
10 his or her purchase of the building.

11 (d) Any construction defect in a building that is purchased in "as is" condition.

12 (e) If the claimant is not the first owner of the building, any construction defect
13 known by the claimant or that could have been discovered by the claimant through
14 the exercise of reasonable diligence before the claimant's purchase of the building.

15 (f) Refusal of anyone to allow the contractor or supplier or the contractor's or
16 supplier's agents to perform their warranty service work.

17 **(5) WARRANTY TERMS.** The claimant and contractor or supplier are bound by any
18 contractor or supplier warranty terms pertaining to products or services supplied to
19 the building.

20 **(6) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR.**
21 A construction defect that is discovered after an initial claim or contribution claim
22 notice has been provided may not be alleged in an action until the claimant or
23 contractor has given the contractor or supplier who performed the original
24 construction work or provided supplies written notice of the new claim or
25 contribution claim regarding the alleged new construction defect based on the

1 claimant's or contractor's most current records. The contractor or supplier shall have
2 an opportunity to resolve the notice of the new claim or contribution claim in the
3 manner provided in sub. (3).

4 (7) RELEASE; INSURANCE. If a claimant or contractor accepts an offer made in
5 compliance with this section and the contractor or supplier fulfills the offer in
6 compliance with this section, the claimant or contractor is barred from bringing an
7 action for the claim described in the notice of claim and the contractor or supplier is,
8 for insurance purposes, legally obligated to make the repairs or the monetary
9 payment as if the claimant or contractor had recovered a judgment against the
10 contractor or supplier in the amount of the cost of the repairs or the amount of the
11 monetary payment.

12 (8) ACTION OF ASSOCIATIONS. (a) In this subsection, "association" means a
13 homeowner's association, condominium association under s. 703.02 (1m), unit
14 owner's association, or a nonprofit corporation created to own and operate portions
15 of a planned community that may assess unit owners for the costs incurred in the
16 performance of the association's obligations.

17 (b) A person may not provide or offer to provide anything of value, directly or
18 indirectly, to a property manager of an association or to a member or officer of an
19 association to induce the property manager, member, or officer to encourage the
20 association to file or discourage the association from filing a claim for damages
21 arising from a construction defect.

22 (c) A property manager retained by an association or a member or officer of an
23 association may not accept anything of value, directly or indirectly, in exchange for
24 encouraging to file or discouraging from filing a claim for damages on behalf of the
25 association arising from a construction defect.

1 (d) A person who knowingly violates par. (b) or (c) is guilty of a misdemeanor.

2 (e) An association may bring an action against a contractor to recover damages
3 resulting from construction defects in any of the common elements or limited
4 common elements of a condominium, as defined in s. 703.02 (2) and (10). Such an
5 action may be maintained only after all of the following occur:

6 1. The association first obtains the written approval of each unit's owner whose
7 interest in the common elements or limited common elements will be subject of the
8 action.

9 2. A vote is held of the units' owners to which at least a majority of the votes
10 of the members of the association are allocated.

11 3. The full board of directors of the association and the contractor have met in
12 person and conferred in a good faith attempt to resolve the association's claim, or the
13 contractor has definitively declined or ignored the requests to meet with the board
14 of directors of the association.

15 4. The association has otherwise satisfied all of the pre-action requirements
16 for a claimant to commence an action as set forth in this section.

17 (f) At least 3 business days in advance of any vote to commence an action by
18 an association to recover damages resulting from construction defects in any of the
19 common elements or limited common elements of a condominium, the attorney
20 representing the association shall provide to each unit's owner a written statement
21 that includes, in reasonable detail all of the following:

22 1. The construction defects and damages or injuries to the common elements
23 or limited common elements.

24 2. The cause of the construction defects, if the cause is known.

1 3. The nature and the extent that is known of the damage or injury resulting
2 from the construction defects.

3 4. The location of each construction defect within the common elements or
4 limited common elements, if known.

5 5. A reasonable estimate of the cost of the action, including reasonable attorney
6 fees and costs, expert fees, and the costs of testing.

7 6. All disclosure that the unit owner is required to make upon the sale of the
8 unit.

9 (g) An association or an attorney for an association may not employ a person
10 to perform destructive tests to determine any damage or injury to a unit, common
11 element, or limited common element caused by a construction defect unless all of the
12 following are true:

13 1. The person has expertise in the testing.

14 2. The association has obtained the prior written approval of each unit's owner
15 whose unit or interest in the common element or limited common element will be
16 affected by the testing.

17 3. The person performing the tests has provided a written schedule for repairs.

18 4. The person performing the tests is required to repair all damage resulting
19 from the tests in accordance with state laws and applicable local ordinances.

20 5. The association or the person so employed obtains all permits required to
21 conduct the tests and to repair any damage resulting from the tests.

22 6. Reasonable prior notice and opportunity to observe the tests is given to the
23 contractor against whom an action may be brought as a result of the tests.

24 (h) An association may commence an action only upon a vote or written
25 agreement of the owners of the units to which at least a majority of the votes of the

1 members of the association are allocated. In such a case, the association shall
2 provide written notice to the owner of each unit of the meeting at which the
3 commencement of an action is to be considered or action is to be taken at least 21
4 calendar days before the meeting.

5 (i) The board of directors of an association may, without giving notice to the
6 units' owners, employ a contractor and other persons necessary to make immediate
7 repairs to a unit or common element within the condominium as are required to
8 protect the health and safety of the units' owners.

9 (9) CONTRIBUTION. (a) A contractor may not seek contribution from a supplier
10 for a claim that a claimant makes against the contractor unless the contractor
11 provides the supplier with a written notice of the claimant's claim and the
12 contribution claim within 10 days of the contractor's receipt of the claim. The
13 contractor shall explain the contribution claim in sufficient detail to explain the
14 nature and results of the alleged construction defect. The contractor shall provide
15 to the supplier all evidence the contractor knows or possesses, including expert
16 reports, photographs, electronic mail, and videotapes that depict the nature and
17 cause of the alleged construction defect. In addition, the contractor shall provide to
18 the supplier any evidence discoverable under ch. 804 that depicts the nature and
19 cause of the alleged construction defect, including expert reports, photographs, and
20 videotapes. The contractor may not later use evidence in an action under this section
21 that the contractor withholds or fails to produce.

22 (b) A person seeking contribution from a supplier who elects to inspect a
23 building under sub. (3) shall send written notice by certified mail of the inspection
24 date and building address, and whether destructive testing is contemplated, at least
25 10 days before the inspection.

↔ insert 14-25 →

© Homeowner

homeowner

1 **(10) ~~CLAIMANT~~ REPAIRS.** Without giving notice under this section, a ~~claimant~~
2 may make immediate repairs to a building to protect the health or safety of its
3 occupants.

4 **SECTION 3. Effective date.**

5 (1) This act first applies to actions commenced on the effective date of this
6 subsection.

7 (END)

Insert 14-25

(c) Within 30 days after a supplier has received notice that a contractor is seeking contribution under sub. (9) (a), the supplier may serve the contractor with a written response that offers to settle the contribution claim by payment, by repair, or by both payment and repair without inspection or that offers to inspect the building that is the subject of the contribution claim. The contractor shall forward the supplier's response to the claimant. The supplier and contractor shall use their best efforts to coordinate their responses to claims and contribution claims.

(d) If the contractor wholly rejects the claim and will neither remedy the alleged construction defect nor settle the claim, or does not respond to the claimant's notice of claim within the time under par. (b), the claimant may bring an action against the contractor for the claims described in the notice of claim without further notice, except as otherwise provided under applicable law.

(e) If the claimant rejects a settlement offer made by the contractor, the claimant shall provide written notice of the claimant's rejection to the contractor and, if represented by legal counsel, the contractor's attorney. The notice shall include the specific factual and, if known, legal reasons for the claimant's rejection of the contractor's proposal or offer. If the claimant believes that the settlement offer omits reference to any portion of the claim, or was unreasonable, the claimant shall in its written notice include those items that the claimant believes were omitted and set forth in detail all reasons why the claimant believes the settlement offer is unreasonable. In any subsequent action in which the claimant asserts that the settlement offer was unreasonable, the claimant may not raise any reasons that were not included in its response to the contractor. The contractor shall forward the claimant's response to a supplier upon whom a contribution claim has been made.

SECTION 2

(e) *supplier* *proposes to inspect the building that is the subject of the contribution claim* *contractor*
(f) If a *supplier* *proposes to inspect the building that is the subject of the contribution claim* proposal for inspection is made under par. (b), the claimant shall, within 30 days of receiving the *contractor's* proposal, provide the *contractor and any supplier* on whom a contribution claim has been made and its agents, experts, and consultants prompt and complete access to the building to inspect the building, document any alleged construction defects, and perform any testing required to evaluate fully the nature, extent, and cause of the claimed construction defects and the nature and extent of any repairs or replacements that may be necessary to remedy them. If destructive testing is required, the *contractor* shall give the *contractor and* claimant and all persons on whom a notice of claim or contribution claim has been served advance notice of the testing at least 10 days before commencement of the testing and shall, after completion of the testing, return the building to its pre-testing condition. If any inspection or testing reveals a condition that requires additional testing to allow the *contractor* to evaluate fully the nature, cause, and extent of the construction defect, the *contractor and* *contractor* shall provide notice to the claimant and all persons on whom a notice of claim or contribution claim has been served of the need for the additional testing and the *contractor and* claimant shall provide access under this paragraph. If a claim is asserted on behalf of the *contractor* owners of multiple buildings, or multiple owners of units within a multifamily complex, then the *supplier* *contractor and* *contractor* shall be entitled to inspect each of the buildings or units. The claimant shall either provide a specific day for the inspection upon reasonable notice for an inspection or require the *supplier* *contractor* to request in writing a day, at least 3 days before the inspection.

(g) Within 14 days following completion of the inspection and receipt of all testing results under par. (f), the *contractor* *contractor* may serve on the *claimant* any of the following:

Contractor

Supplier

1. A written offer to remedy fully or partially the construction defect at no cost to the claimant. The offer shall include a description of any additional construction necessary to remedy the construction defect and an anticipated timetable for the completion of the construction.

2. A written offer to settle the claim by monetary payment.

3. A written offer including a combination of repairs and monetary payment.

4. A written statement that the contractor will not proceed further to remedy the construction defect.

(h) If a claimant accepts a contractor's offer made under par. (g) and the contractor does not proceed to make the monetary payment or remedy the construction defect within the agreed timetable, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice, except as otherwise provided by applicable law. The claimant may also file the contractor's offer and claimant's acceptance, and the offer and acceptance creates a rebuttable presumption that a binding and valid settlement agreement has been created and should be enforced by the court.

(i) If a claimant receives a written statement that the contractor will not proceed further to remedy the construction defect, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice, except as otherwise provided by applicable law.

(j) If the claimant rejects the offer made by the contractor to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor. The notice shall include the specific factual and, if known, legal reasons for the claimant's rejection of the contractor's offer. If the claimant believes the

Contractor

Supplier

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supplier[✓]

contractor

1 contractor's settlement offer is unreasonable, the claimant shall set forth in detail
2 all reasons why the claimant believes the settlement offer is unreasonable. In
3 any subsequent action in which the claimant asserts that the settlement offer was
4 unreasonable, the claimant may not raise any new reasons unless the claimant later
5 discovers significant information.

6 (K) Upon receipt of a claimant's rejection and the reasons for the rejection, the
7 contractor may, within 15 days of receiving the rejection, make a supplemental offer
8 of repair or monetary payment to the claimant.

9 (L) If the claimant rejects the supplemental offer made by the contractor to
10 remedy the construction defect or to settle the claim by monetary payment or a
11 combination of each, the claimant shall serve written notice of the claimant's
12 rejection on the contractor. The notice shall include the specific factual and, if
13 known, legal reasons for the claimant's rejection of the contractor's supplemental
14 settlement offer. If the claimant believes the contractor's supplemental settlement
15 offer is unreasonable, the claimant shall set forth in detail all reasons why the
16 claimant believes the supplemental settlement offer is unreasonable. In any
17 subsequent action in which the claimant asserts that the settlement offer was
18 unreasonable, the claimant may not raise any reasons that were not included in its
19 response to the contractor.

20 (M) If a claimant rejects a reasonable offer, including any reasonable
21 supplemental offer, made as provided under this subsection or does not permit the
22 contractor to repair the construction defect pursuant to an accepted offer of
23 settlement, the claimant may not recover an amount in excess of the fair market
24 value of the offer of settlement, or the actual cost of the repairs made, whichever is
25 less, or the amount of a monetary offer of settlement. For purposes of this paragraph,

Contractor

1 the trier of fact shall determine the reasonableness of an offer of settlement. If the
2 claimant has rejected a reasonable offer, including any reasonable supplemental
3 offer, and any other law allows the claimant to recover costs and attorney fees, then
4 the claimant may recover no costs or attorney fees incurred after the date of its
5 rejection.

6 (m) A claimant accepting the offer of the contractor to remedy a construction
7 defect shall do so by serving the contractor with a written notice of acceptance within
8 a reasonable period of time after receipt of the contractor's settlement offer, but no
9 later than 30 days after receipt of the offer. If no response is served upon the
10 contractor within the 30-day period, then the offer shall be deemed accepted.

11 (n) If a claimant accepts a contractor's offer to repair a construction defect
12 described in a notice of claim, the claimant shall provide the contractor and its
13 agents, experts, and consultants prompt and unfettered access to the building to
14 perform and complete the construction by the timetable stated in the settlement
15 offer.

(end of insert 14-25)

16 (p) If, during the pendency of the notice, inspection, offer, acceptance, or repair
17 process, an applicable limitations period would otherwise expire, the claimant may
18 file an action against the contractor or supplier, but the action shall be immediately
19 abated pending completion of the notice of claim process described in this section.
20 This paragraph shall not be construed to revive a statute of limitations period that
21 has expired before the date on which a claimant's written notice of claim is served
22 or extend any applicable statute of repose.

23 (q) After the sending of the initial notice of claim, a claimant, a contractor, and
24 a supplier may, by written mutual agreement, alter the procedure for the notice of
25 claim process described in this section.

D-Note

① Attorney Liet has left the LRB
so I am taking over this
draft. I tried to follow
the instructions to repeat
sub^⓪~~PARA~~ (3) (d) to (e) for the
contractor - supplier conflict
and created sub^⓪ (9) (b) to (m).
I hope that was your intent.

② I made the change requested
on p^o 4¹ 6 3 (90 to 135 days),
and the change on p^o 15¹ 6 1 regarding
✓homeowner✓

③ I did not add a ^{Cross-reference} ~~cross-ref~~ to the ^{101.148} ~~501.142(1)~~
(F) definition of ✓supplier✓ because that is on p^o 3¹ 6 1^⓪

RPN

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2307/P5dn
RPN:wlj:rs

October 10, 2005

Attorney Lief has left the LRB so I am taking over this draft. I tried to follow the instructions to repeat sub. (3) (d) to (o) for the contractor-supplier conflict and created sub. (9) (b) to (m). I hope that was your intent.

I made the change requested on p. 4, l. 3 (90 to 135 days), and the change on p. 15, l. 1 regarding "homeowner."

I did not add a cross-reference to the s. 101.148 (1) (f) definition of "supplier" because that is on p. 3, l. 19.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.state.wi.us



State of Wisconsin
2005 – 2006 LEGISLATURE

Wanted 10/24 PM

LRB-2307/P5
RPN&RNK:wlj:rs

stays
16
stays

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

Regen

1 AN ACT to create 101.148 and 895.07 of the statutes; relating to: claims against
2 certain building contractors.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 101.148 of the statutes is created to read:

4 **101.148 Contractor notices.** (1) DEFINITIONS. In this section:

5 (a) "Building" means any structure that is an improvement to land and that is
6 intended for use as a dwelling.

7 (b) "Claimant" has the meaning given in s. 895.07 (1) (c).

8 (c) "Contractor" means a person that enters into a contract with a potential
9 claimant to construct a building on the potential claimant's land, to complete a
10 remodeling project on a building on the potential claimant's land, or to complete a

1 remodeling project on the potential claimant's modular home. "Contractor" includes
2 a subcontractor.

3 (e) "Remodel" does not include maintenance and repair work.

4 (f) "Supplier" means a person that supplies windows or doors to a building.

5 **(2) NOTICE REQUIRED AT TIME OF CONTRACTING.** (a) Upon entering into a contract
6 to construct a building, to complete a remodeling project on a building, or to complete
7 a remodeling project on a modular home, the contractor shall give the potential
8 claimant, if any, a notice worded substantially as follows:

9 NOTICE CONCERNING CONSTRUCTION

10 DEFECTS

11 Wisconsin law contains important requirements you must follow before you
12 may file a lawsuit for defective construction against the contractor who constructed
13 your building or completed your remodeling project or against window or door
14 suppliers. For example, section 895.07 (2) and (3) of the Wisconsin statutes requires
15 you to deliver to the contractor a written notice of any construction conditions you
16 allege are defective before you file your lawsuit, and you must provide your
17 contractor or window or door suppliers the opportunity to make an offer to repair or
18 pay for the construction defects. You are not obligated to accept any offer made by
19 the contractor or window or door suppliers, but failure to accept a reasonable offer
20 may limit your recoverable damages. All parties are bound by applicable warranty
21 provisions.

22 (b) The notice required under par. (a) shall be conspicuous and in writing and
23 may be included within the contract between the contractor and the potential
24 claimant.

25 **SECTION 2.** 895.07 of the statutes is created to read:

1 **895.07 Claims against contractors and suppliers. (1) DEFINITIONS.** In this
2 section:

3 (a) “Action” means a civil action or an arbitration under ch. 788.

4 (b) “Building” has the meaning given in s. 101.148 (1) (a).

5 (c) “Claimant” means a homeowner, other than a developer or builder, who
6 asserts a claim against a contractor or supplier concerning a construction defect.

7 (d) “Construction defect” has the meaning assigned by a written, express
8 warranty provided by the contractor or, if no such meaning is assigned by warranty,
9 means a deficiency in the specifications, planning, supervision, construction, or
10 remodeling of a building or in the remodeling of a modular home that results from
11 any of the following:

12 1. Defective material.

13 2. Violation of applicable building codes.

14 3. Failure to follow accepted trade standards for workmanlike construction.

15 (e) “Contractor” means a person that enters into a contract with a potential
16 claimant to construct a building or to complete a remodeling project on a building.

17 (g) “Serve” or “service” means personal service or delivery by certified mail,
18 return receipt requested, to the last-known address of the addressee.

19 (h) “Supplier” has the meaning given in s. 101.148 (1) (f).

20 **(2) ACTION; DISMISSAL WITHOUT PREJUDICE.** Before filing an action against a
21 contractor or supplier for a construction defect, the claimant shall serve the
22 contractor with a notice of the claim that describes the claim in sufficient detail to
23 determine the general nature of the construction defect. If the claimant files an
24 action but fails to serve the notice of claim, the court shall dismiss the action without

1 prejudice, and the action may not be refiled until the claimant has complied with the
2 requirements of this subsection.

3 (3) NOTICE AND OPPORTUNITY TO REPAIR. (a) No later than ⁹⁰~~180~~ days before
4 initiating an action against a contractor or supplier under this section, the claimant
5 shall serve written notice of claim under sub. (2) on the contractor. The notice of
6 claim shall state that the claimant asserts a construction defect claim or claims and
7 is providing notice under this paragraph. The notice of claim shall describe the claim
8 or claims in sufficient detail to explain the nature of the alleged construction defect
9 and the results of the construction defect. The claimant shall provide to the
10 contractor all evidence the claimant knows or possesses, including expert reports,
11 photographs, electronic mail, and videotapes that depict the nature and cause of the
12 alleged construction defect. In addition, the claimant shall provide to the contractor
13 any evidence discoverable under ch. 804 that depicts the nature and cause of the
14 construction defect, including expert reports, photographs, and videotapes. The
15 claimant may not later use evidence in an action under this section that the claimant
16 withholds or fails to produce.

17 (b) Within 30 days after the claimant serves notice of claim under par. (a), or
18 within 45 days if the contractor makes a claim for contribution from a supplier under
19 sub. (9) (a), each contractor that has received the notice of claim may serve on the
20 claimant, and on any other contractor that has received the notice of claim and on
21 any supplier that has received a claim for contribution under sub. (9) (a), a written
22 response to the claim or claims that either offers to settle the claim by monetary
23 payment, the making of repairs, or a combination of both, without inspection, or
24 proposes to inspect the building that is the subject of the claim.

1 (c) Within 30 days after a supplier has received notice that a contractor is
2 seeking contribution under sub. (9) (a), the supplier may serve the contractor with
3 a written response that offers to settle the contribution claim by payment, by repair,
4 or by both payment and repair without inspection or that offers to inspect the
5 building that is the subject of the contribution claim. The contractor shall forward
6 the supplier's response to the claimant. The supplier and contractor shall use their
7 best efforts to coordinate their responses to claims and contribution claims.

8 (d) If the contractor wholly rejects the claim and will neither remedy the alleged
9 construction defect nor settle the claim, or does not respond to the claimant's notice
10 of claim within the time under par. (b), the claimant may bring an action against the
11 contractor for the claims described in the notice of claim without further notice.

12 (e) If the claimant rejects a settlement offer made by the contractor, the
13 claimant shall provide written notice of the claimant's rejection to the contractor ~~and,~~
14 ~~if represented by legal counsel, the contractor's attorney.~~ The notice shall include the
15 specific factual and, if known, legal reasons for the claimant's rejection of the
16 contractor's proposal or offer. If the claimant believes that the settlement offer omits
17 reference to any portion of the claim, or was unreasonable, the claimant shall in its
18 written notice include those items that the claimant believes were omitted and set
19 forth in detail all reasons why the claimant believes the settlement offer is
20 unreasonable. In any subsequent action in which the claimant asserts that the
21 settlement offer was unreasonable, the claimant may not raise any reasons that were
22 not included in its response to the contractor. The contractor shall ~~forward~~ ^{Forward} the
23 claimant's response to a supplier upon whom a contribution claim has been made.

24 (f) If a proposal for inspection is made under par. (b), the claimant shall, within
25 30 days of receiving the contractor's proposal, provide the contractor and any

1 supplier on whom a contribution claim has been made and its agents, experts, and
2 consultants prompt and complete access to the building to inspect the building,
3 document any alleged construction defects, and perform any testing required to
4 evaluate fully the nature, extent, and cause of the claimed construction defects and
5 the nature and extent of any repairs or replacements that may be necessary to
6 remedy them. If destructive testing is required, the contractor shall give the
7 claimant and all persons on whom a notice of claim or contribution claim has been
8 served advance notice of the testing at least 10 days before commencement of the
9 testing and shall, after completion of the testing, return the building to its
10 pre-testing condition. If any inspection or testing reveals a condition that requires
11 additional testing to allow the contractor to evaluate fully the nature, cause, and
12 extent of the construction defect, the contractor shall provide notice to the claimant
13 and all persons on whom a notice of claim or contribution claim has been served of
14 the need for the additional testing and the claimant shall provide access under this
15 paragraph. If a claim is asserted on behalf of the owners of multiple buildings, or
16 multiple owners of units within a multifamily complex, then the contractor shall be
17 entitled to inspect each of the buildings or units. The claimant shall either provide
18 a specific day for the inspection upon reasonable notice for an inspection or require
19 the contractor to request in writing a day, at least 3 days before the inspection.

20 (g) Within 14 days following completion of the inspection and receipt of all
21 testing results under par. (f), the contractor may serve on the claimant any of the
22 following:

23 1. A written offer to remedy fully or partially the construction defect at no cost
24 to the claimant. The offer shall include a description of any additional construction

(1) necessary to remedy the construction defect and an anticipated timetable for the completion of the construction.

2. A written offer to settle the claim by monetary payment.

3. A written offer including a combination of repairs and monetary payment.

4. A written statement that the contractor will not proceed further to remedy the construction defect.

offer is deemed accepted under paragraph (h) within 30 days after receipt of the offer, or if the
(h) If a claimant accepts a contractor's offer made under par. (g) and the contractor does not proceed to make the monetary payment or remedy the construction defect within the agreed timetable, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice. The claimant may also file the contractor's offer and claimant's acceptance, and the offer and acceptance creates a rebuttable presumption that a binding and valid settlement agreement has been created and should be enforced by the court.

(i) If a claimant receives a written statement that the contractor will not proceed further to remedy the construction defect, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice.

(j) If the claimant rejects the offer made by the contractor to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor. The notice shall include the specific factual and, if known, legal reasons for the claimant's rejection of the contractor's offer. If the claimant believes the contractor's settlement offer is unreasonable, the claimant shall set forth in detail all reasons why the claimant believes the settlement offer is unreasonable. In any subsequent action in which the claimant asserts that the settlement offer was

1 unreasonable, the claimant may not raise any new reasons unless the claimant later
2 discovers significant information.

3 (k) Upon receipt of a claimant's rejection and the reasons for the rejection, the
4 contractor may, within 15 days of receiving the rejection, make a supplemental offer
5 of repair or monetary payment to the claimant.

6 (L) If the claimant rejects the supplemental offer made by the contractor to
7 remedy the construction defect or to settle the claim by monetary payment or a
8 combination of each, the claimant shall serve written notice of the claimant's
9 rejection on the contractor. The notice shall include the specific factual and, if
10 known, legal reasons for the claimant's rejection of the contractor's supplemental
11 settlement offer. If the claimant believes the contractor's supplemental settlement
12 offer is unreasonable, the claimant shall set forth in detail all reasons why the
13 claimant believes the supplemental settlement offer is unreasonable. In any
14 subsequent action in which the claimant asserts that the settlement offer was
15 unreasonable, the claimant may not raise any reasons that were not included in its
16 response to the contractor.

17 (m) If a claimant rejects a reasonable offer, including any reasonable
18 supplemental offer, made as provided under this subsection or does not permit the
19 contractor to repair the construction defect pursuant to an accepted offer of
20 settlement, the claimant may not recover an amount in excess of the fair market
21 value of the offer of settlement, or the actual cost of the repairs made, whichever is
22 less, or the amount of a monetary offer of settlement. For purposes of this paragraph,
23 the trier of fact shall determine the reasonableness of an offer of settlement. If the
24 claimant has rejected a reasonable offer, including any reasonable supplemental
25 offer, and any other law allows the claimant to recover costs and attorney fees, then

1 the claimant may recover no costs or attorney fees incurred after the date of its
2 rejection.

3 (n) A claimant accepting the offer of the contractor to remedy a construction
4 defect shall do so by serving the contractor with a written notice of acceptance within
5 a reasonable period of time after receipt of the contractor's settlement offer, but no
6 later than 30 days after receipt of the offer. If no response is served upon the
7 contractor within the 30-day period, then the offer shall be deemed accepted.

8 (o) If a claimant accepts a contractor's offer to repair a construction defect
9 described in a notice of claim, the claimant shall provide the contractor and its
10 agents, experts, and consultants prompt and unfettered access to the building to
11 perform and complete the construction by the timetable stated in the settlement
12 offer.

13 (p) If, during the pendency of the notice, inspection, offer, acceptance, or repair
14 process, an applicable limitations period would otherwise expire, the claimant may
15 file an action against the contractor or supplier, but the action shall be immediately
16 abated pending completion of the notice of claim process described in this section.
17 This paragraph shall not be construed to revive a statute of limitations period that
18 has expired before the date on which a claimant's written notice of claim is served
19 or extend any applicable statute of repose.

20 (q) After the sending of the initial notice of claim, a claimant, a contractor, and
21 a supplier may, by written mutual agreement, alter the procedure for the notice of
22 claim process described in this section.

23 **(4) CONTRACTOR OR SUPPLIER NOT LIABLE FOR CERTAIN DAMAGES.** In an action
24 relating to a building involving a construction defect, a contractor or supplier shall
25 not be liable for damages involving or caused by any of the following:

1 (a) Normal shrinkage due to drying or settlement of construction components
2 within the tolerance of building standards.

3 (b) The contractor's or supplier's reliance on written information relating to the
4 building that was obtained from official government records or provided by a
5 government entity.

6 (c) Any construction defect known by or disclosed to a claimant in writing before
7 his or her purchase of the building.

8 (d) Any construction defect in a building that is purchased in "as is" condition.

9 (e) If the claimant is not the first owner of the building, any construction defect
10 known by the claimant or that could have been discovered by the claimant through
11 the exercise of reasonable diligence before the claimant's purchase of the building.

12 (f) Refusal of anyone to allow the contractor or supplier or the contractor's or
13 supplier's agents to perform their warranty service work.

14 **(5) WARRANTY TERMS.** The claimant and contractor or supplier are bound by any
15 contractor or supplier warranty terms pertaining to products or services supplied to
16 the building.

17 **(6) ADDITIONAL CONSTRUCTION DEFECTS AND NOTICE AND OPPORTUNITY TO REPAIR.**
18 A construction defect that is discovered after an initial claim or contribution claim
19 notice has been provided may not be alleged in an action until the claimant or
20 contractor has given the contractor or supplier who performed the original
21 construction work or provided supplies written notice of the new claim or
22 contribution claim regarding the alleged new construction defect based on the
23 claimant's or contractor's most current records. The contractor or supplier shall have
24 an opportunity to resolve the notice of the new claim or contribution claim in the
25 manner provided in sub. (3).

1 **(7) RELEASE; INSURANCE.** If a claimant or contractor accepts an offer made in
2 compliance with this section and the contractor or supplier fulfills the offer in
3 compliance with this section, the claimant or contractor is barred from bringing an
4 action for the claim described in the notice of claim and the contractor or supplier is,
5 for insurance purposes, legally obligated to make the repairs or the monetary
6 payment as if the claimant or contractor had recovered a judgment against the
7 contractor or supplier in the amount of the cost of the repairs or the amount of the
8 monetary payment.

9 **(8) ACTION OF ASSOCIATIONS.** (a) In this subsection, “association” means a
10 homeowner’s association, condominium association under s. 703.02 (1m), unit
11 owner’s association, or a nonprofit corporation created to own and operate portions
12 of a planned community that may assess unit owners for the costs incurred in the
13 performance of the association’s obligations.

14 (b) A person may not provide or offer to provide anything of value, directly or
15 indirectly, to a property manager of an association or to a member or officer of an
16 association to induce the property manager, member, or officer to encourage the
17 association to file or discourage the association from filing a claim for damages
18 arising from a construction defect.

19 (c) A property manager retained by an association or a member or officer of an
20 association may not accept anything of value, directly or indirectly, in exchange for
21 encouraging to file or discouraging from filing a claim for damages on behalf of the
22 association arising from a construction defect.

23 (d) A person who knowingly violates par. (b) or (c) is guilty of a misdemeanor.

24 (e) An association may bring an action against a contractor to recover damages
25 resulting from construction defects in any of the common elements or limited

1 common elements of a condominium, as defined in s. 703.02 (2) and (10). Such an
2 action may be maintained only after all of the following occur:

3 1. The association first obtains the written approval of each unit's owner whose
4 interest in the common elements or limited common elements will be subject of the
5 action.

6 2. A vote is held of the units' owners to which at least a majority of the votes
7 of the members of the association are allocated.

8 3. The full board of directors of the association and the contractor have met in
9 person and conferred in a good faith attempt to resolve the association's claim, or the
10 contractor has definitively declined or ignored the requests to meet with the board
11 of directors of the association.

12 4. The association has otherwise satisfied all of the pre-action requirements
13 for a claimant to commence an action as set forth in this section.

14 (f) At least 3 business days in advance of any vote to commence an action by
15 an association to recover damages resulting from construction defects in any of the
16 common elements or limited common elements of a condominium, the attorney
17 representing the association shall provide to each unit's owner a written statement
18 that includes, in reasonable detail all of the following:

19 1. The construction defects and damages or injuries to the common elements
20 or limited common elements.

21 2. The cause of the construction defects, if the cause is known.

22 3. The nature and the extent that is known of the damage or injury resulting
23 from the construction defects.

24 4. The location of each construction defect within the common elements or
25 limited common elements, if known.

1 5. A reasonable estimate of the cost of the action, including reasonable attorney
2 fees and costs, expert fees, and the costs of testing.

3 6. All disclosure that the unit owner is required to make upon the sale of the
4 unit.

5 (g) An association or an attorney for an association may not employ a person
6 to perform destructive tests to determine any damage or injury to a unit, common
7 element, or limited common element caused by a construction defect unless all of the
8 following are true:

9 1. The person has expertise in the testing.

10 2. The association has obtained the prior written approval of each unit's owner
11 whose unit or interest in the common element or limited common element will be
12 affected by the testing.

13 3. The person performing the tests has provided a written schedule for repairs.

14 4. The person performing the tests is required to repair all damage resulting
15 from the tests in accordance with state laws and applicable local ordinances.

16 5. The association or the person so employed obtains all permits required to
17 conduct the tests and to repair any damage resulting from the tests.

18 6. Reasonable prior notice and opportunity to observe the tests is given to the
19 contractor against whom an action may be brought as a result of the tests.

20 (h) An association may commence an action only upon a vote or written
21 agreement of the owners of the units to which at least a majority of the votes of the
22 members of the association are allocated. In such a case, the association shall
23 provide written notice to the owner of each unit of the meeting at which the
24 commencement of an action is to be considered or action is to be taken at least 21
25 calendar days before the meeting.

1 (i) The board of directors of an association may, without giving notice to the
2 units' owners, employ a contractor and other persons necessary to make immediate
3 repairs to a unit or common element within the condominium as are required to
4 protect the health and safety of the units' owners.

5 **(9) CONTRIBUTION.** (a) A contractor may not seek contribution from a supplier
6 for a claim that a claimant makes against the contractor unless the contractor
7 provides the supplier with a written notice of the claimant's claim and the
8 contribution claim within 10 days of the contractor's receipt of the claim. The
9 contractor shall explain the contribution claim in sufficient detail to explain the
10 nature and results of the alleged construction defect. The contractor shall provide
11 to the supplier all evidence the contractor knows or possesses, including expert
12 reports, photographs, electronic mail, and videotapes that depict the nature and
13 cause of the alleged construction defect. In addition, the contractor shall provide to
14 the supplier any evidence discoverable under ch. 804 that depicts the nature and
15 cause of the alleged construction defect, including expert reports, photographs, and
16 videotapes. The contractor may not later use evidence in an action under this section
17 that the contractor withholds or fails to produce.

18 (b) Within 30 days after a supplier has received notice that a contractor is
19 seeking contribution under par. (a), the supplier may serve the contractor with a
20 written response that offers to settle the contribution claim by payment, by repair,
21 or by both payment and repair without inspection or that offers to inspect the
22 building that is the subject of the contribution claim. The contractor shall forward
23 the supplier's response to the claimant. The supplier and contractor shall use their
24 best efforts to coordinate their responses to claims and contribution claims.

1 (c) If the supplier wholly rejects the contribution claim and will neither remedy
2 the alleged construction defect nor settle the claim, or does not respond to the
3 contractor's notice of contribution claim within the time under par. (b), the contractor
4 may bring an action against the supplier for the claims described in the notice of
5 contribution claim without further notice.

6 (d) If the contractor rejects a settlement offer made by the supplier, the
7 contractor shall provide written notice of the contractor's rejection to the supplier
8 and, if the supplier is represented by legal counsel, the supplier's attorney. The
9 notice shall include the specific factual and, if known, legal reasons for the
10 contractor's rejection of the supplier's proposal or offer. If the contractor believes that
11 the settlement offer omits reference to any portion of the claim, or was unreasonable,
12 the contractor shall in its written notice include those items that the contractor
13 believes were omitted and set forth in detail all reasons why the contractor believes
14 the settlement offer is unreasonable. In any subsequent action in which the
15 contractor asserts that the settlement offer was unreasonable, the contractor may
16 not raise any reasons that were not included in its response to the supplier.

17 (e) If a supplier proposes to inspect the building that is the subject of the
18 contribution claim, the contractor and claimant shall, within 30 days of receiving the
19 supplier's proposal, provide the supplier and its agents, experts, and consultants
20 prompt and complete access to the building to inspect the building, document any
21 alleged construction defects, and perform any testing required to evaluate fully the
22 nature, extent, and cause of the claimed construction defects and the nature and
23 extent of any repairs or replacements that may be necessary to remedy them. If
24 destructive testing is required, the supplier shall give the contractor and claimant
25 and all persons on whom a notice of claim or contribution claim has been served

SECTION 2

1 advance notice of the testing at least 10 days before commencement of the testing and
2 shall, after completion of the testing, return the building to its pre-testing condition.
3 If any inspection or testing reveals a condition that requires additional testing to
4 allow the supplier to evaluate fully the nature, cause, and extent of the construction
5 defect, the supplier shall provide notice to the contractor and claimant and all
6 persons on whom a notice of claim or contribution claim has been served of the need
7 for the additional testing and the contractor and claimant shall provide access under
8 this paragraph. If a claim is asserted on behalf of the contractor of multiple
9 buildings, or multiple owners of units within a multifamily complex, then the
10 supplier shall be entitled to inspect each of the buildings or units. The contractor and
11 claimant shall either provide a specific day for the inspection upon reasonable notice
12 for an inspection or require the supplier to request in writing a day, at least 3 days
13 before the inspection.

14 (f) Within 14 days following completion of the inspection and receipt of all
15 testing results under par. (e), the supplier may serve on the contractor any of the
16 following:

17 1. A written offer to remedy fully or partially the construction defect at no cost
18 to the contractor. The offer shall include a description of any additional construction
19 necessary to remedy the construction defect and an anticipated timetable for the
20 completion of the construction.

21 2. A written offer to settle the claim by monetary payment.

22 3. A written offer including a combination of repairs and monetary payment.

23 4. A written statement that the supplier will not proceed further to remedy the
24 construction defect.

within 30 days after receipt of the offer, or if the offer is deemed accepted under par. (a),

(1) (g) If a contractor accepts a supplier's offer made under par. (f) and the supplier does not proceed to make the monetary payment or remedy the construction defect within the agreed timetable, the contractor may bring an action against the supplier for the claim described in the notice of claim without further notice. The claimant may also file the supplier's offer and contractor's acceptance, and the offer and acceptance creates a rebuttable presumption that a binding and valid settlement agreement has been created and should be enforced by the court.

(h) If a contractor receives a written statement that the supplier will not proceed further to remedy the construction defect, the contractor may bring an action against the supplier for the claim described in the notice of claim without further notice.

(i) If the contractor rejects the offer made by the supplier to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the contractor shall serve written notice of the contractor's rejection on the supplier. The notice shall include the specific factual and, if known, legal reasons for the contractor's rejection of the supplier's offer. If the contractor believes the supplier's settlement offer is unreasonable, the contractor shall set forth in detail all reasons why the claimant believes the settlement offer is unreasonable. In any subsequent action in which the contractor asserts that the settlement offer was unreasonable, the contractor may not raise any new reasons unless the contractor later discovers significant information.

(j) Upon receipt of a contractor's rejection and the reasons for the rejection, the supplier may, within 15 days of receiving the rejection, make a supplemental offer of repair or monetary payment to the contractor.

1 (k) If the contractor rejects the supplemental offer made by the supplier to
2 remedy the construction defect or to settle the claim by monetary payment or a
3 combination of each, the contractor shall serve written notice of the contractor's
4 rejection on the supplier. The notice shall include the specific factual and, if known,
5 legal reasons for the contractor's rejection of the supplier's supplemental settlement
6 offer. If the contractor believes the supplier's supplemental settlement offer is
7 unreasonable, the contractor shall set forth in detail all reasons why the contractor
8 believes the supplemental settlement offer is unreasonable. In any subsequent
9 action in which the contractor asserts that the settlement offer was unreasonable,
10 the contractor may not raise any reasons that were not included in its response to
11 the supplier.

12 (L) If a contractor rejects a reasonable offer, including any reasonable
13 supplemental offer, made as provided under this subsection or does not permit the
14 supplier to repair the construction defect pursuant to an accepted offer of settlement,
15 the contractor may not recover an amount in excess of the fair market value of the
16 offer of settlement, or the actual cost of the repairs made, whichever is less, or the
17 amount of a monetary offer of settlement. For purposes of this paragraph, the trier
18 of fact shall determine the reasonableness of an offer of settlement. If the contractor
19 has rejected a reasonable offer, including any reasonable supplemental offer, and any
20 other law allows the contractor to recover costs and attorney fees, then the contractor
21 may recover no costs or attorney fees incurred after the date of its rejection.

22 (m) A contractor accepting the offer of the supplier to remedy a construction
23 defect shall do so by serving the supplier with a written notice of acceptance within
24 a reasonable period of time after receipt of the supplier's settlement offer, but no later

1 than 30 days after receipt of the offer. If no response is served upon the supplier
2 within the 30-day period, then the offer shall be deemed accepted.

3 (n) If a contractor accepts a supplier's offer to repair a construction defect
4 described in a notice of claim, the contractor shall provide the supplier and its agents,
5 experts, and consultants prompt and unfettered access to the building to perform
6 and complete the construction by the timetable stated in the settlement offer.

7 **(10) HOMEOWNER REPAIRS.** Without giving notice under this section, a
8 homeowner may make immediate repairs to a building to protect the health or safety
9 of its occupants.

10 **SECTION 3. Effective date.**

11 (1) This act first applies to actions commenced on the effective date of this
12 subsection.

13 **(END)**

Committee/Final amendment or changes to LRB-2307/5:**1) WRA/Wieckert**

- a. Remove the line "The claimant may not later use evidence in an action under this section that the claimant withholds or fails to produce." on page 4, lines 14-16. *DONE in 16*
- b. Remove the term: "In any subsequent action in which the claimant asserts that the settlement offer was unreasonable, the claimant may not raise any reasons that were not included in its response to the contractor." from page 5, lines 21-23. *DONE in 16*
- c. Remove, page 8, lines 13-16, "In any subsequent action in which the claimant asserts that the settlement offer was unreasonable, the claimant may not raise any reasons that were not included in its response to the contractor." *DONE in 16*

2) Wieckert other

- a. Page 5, line 13, Rep. Wieckert would like to replace "and" with "or" (the claimant can reject a settlement and notice either the contractor or his attorney). *DONE in 16*
- b. Page 7, line 1 mentions "anticipated timetable". Page 7 line 9 mentions "agreed timetable". What is the difference? Rep. Wieckert would like this section explained. *DONE in 16*

Explanation: "Anticipated timetable" was used on page 7, line 1 because it's a proposed timetable at that point. "Agreed timetable" was used on page 7, line 9 because at that point the proposed timetable has been accepted by the other party. *DONE*

We could use the term "anticipated timetable" or "agreed timetable" on Page 7, line 1. *DONE in 16*

3) Wisconsin Window and Door Manufacturers Coalition:

- a. P. 5, lines 5-6: Revise the full sentence on those lines to read as follows: "If a contribution claim is made, the contractor shall forward all responses from the supplier relating to the contribution claim to the claimant." (Note: We want to make sure that the claimant sees all responses from the supplier, including the initial response and all subsequent responses.) *OK TO MAKE 15 2+3*

- b. P. 5, line 22: Change "foreword" to "forward." *DONE in 16*

- c. P. 9, line 20: After "claim," insert "and initial contribution claim." *OK! P9/LINE 15*

- d. P. 9, line 21: After "agreement," insert "of all parties involved." (Note: We want to make sure that all parties involved need to agree before the provisions in the statutes are altered.) *NO*

- e. P. 10, line 25: After "sub. (3)," insert "and sub. (9)." *OK? OK*

- f. P. 14, line 16: After "videotapes," insert the following: "The evidence provided to the supplier shall include all evidence provided to the contractor by the claimant." *OK*

- g. P. 19, line 6: After that line, insert the following: *OK*

(o) A person seeking contribution from a supplier who elects to inspect a building under sub. (3) shall send to the supplier written notice by certified mail of the inspection date and building address, and whether destructive testing is contemplated, at least 10 days before the inspection.

(p) This section does not apply to a contractor's or supplier's right to seek contribution, indemnity or recovery against any party other than a supplier as defined in Sec. 101.148(1)(f) for a claim

made against a contractor or a supplier." (Note: We want to make it clear that contribution can be sought from other parties besides window and door suppliers without going through the notice and opportunity to repair process.)

4) Miscellaneous

a. Some people have said that the homeowner should be able to bring an action right away if the builder declines to make a supplemental offer or if the homeowner rejects the supplemental offer. Strictly speaking, under the current wording of the bill, if the builder declines to make a supplemental offer, or if the homeowner rejects the supplemental offer, the homeowner would have to wait until day 135 before bringing an action. This could be amended with the change to page 8, line 16 described below.

5) Senator Luther Olsen and Rep Wieckert:

a. Several people have expressed concern about the wording in Sec. 895.07(3)(a) which states that a claimant must serve a written notice of claim no later than 135 days before bringing an action against a contractor or supplier. The concern is that this will be interpreted to mean that a claimant must always wait 135 days before being able to bring an action and some people will feel that this is a long time to wait.

In fact, in most cases the process will be completed well before 135 days have passed. Either the contractor will make an offer that the claimant will accept, or the contractor will reject the claim, or the claimant will reject the contractor's offer and supplemental offer (if any), well before the 135 day mark is reached. As soon as any of those things happens, either the claim will be resolved or the claimant can bring an action.

To avoid confusion, changes along the lines of those suggested below would make it clear that a claimant could bring an action at the point at which the contractor rejects the claim, or the claimant rejects an offer and a supplemental offer (if any). It is likely that in most cases all steps in the process will be completed well before 135 days have elapsed. The process will only take as long as 135 days in those cases where a supplier is involved, an inspection is involved, an offer and supplemental offer are involved, and the parties take the maximum amount of time to complete each step in the process.

P. 4, lines 3-5: ^{NO} Revise the full sentence on those lines to read as follows: "A claimant may not initiate an action against a contractor or supplier unless it has served a written notice of claim under sub. (2) on the contractor and all the requirements set forth in this section have been fulfilled."

8-11
P. 8, line 16: At the end of that line, insert the following: "If the contractor declines to make a supplemental offer, or if the claimant rejects the supplemental offer, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice." OK

P. 9, line 7: At the end of that line, insert the following: "If all the requirements set forth in this section have been fulfilled, and if the claimant has rejected any outstanding offers, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice." OK

(9-2)